

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

JOHN ANTHONY CASTRO,

Plaintiff,

v.

SECRETARY OF STATE ANDREW
WARNER and DONALD JOHN TRUMP,

Defendants.

WEST VIRGINIA REPUBLICAN PARTY
and STATE OF WEST VIRGINIA,

Intervenors.

Civil Action No. 2:23-cv-00598

Honorable Irene C. Berger

SUPPLEMENTAL FILING REGARDING
SECRETARY OF STATE'S MOTION TO DISMISS

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INTRODUCTION

Comes now, Defendant, Mac Warner, in his official capacity as Secretary of the State of West Virginia, (hereinafter “the Secretary” or “Secretary Warner”) and makes this supplemental filing in relation to the standing arguments of his motion to dismiss, *see* ECF No. 45 (the “Motion”), and his memorandum of law in support of his motion to dismiss, *see* ECF No. 46 (the “Memorandum”) filed on October 12, 2023. This filing is in keeping with the Memorandum Opinion and Order entered on October 31, 2023 (the “Order”). *See* ECF No. 66.

As noted in the Order, “[a] defendant may challenge subject-matter jurisdiction in one of two ways: facially or factually.” ECF No. 66, p. 3 (citing *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017)). While the “district court may consider matters outside the pleadings in a factual challenge to jurisdiction,” *id.*, the Motion and Memorandum’s arguments regarding the Complaint are wholly focused on facial deficiencies and the attendant standard. Consequently, those arguments would not be enhanced by factual development as they are not predicated on the truth or falsity of the Complaint’s allegations. Rather, the Secretary simply “accepts the facts as pled and contends they are insufficient to support subject matter jurisdiction.” ECF No. 66, p. 3.

For the reasons detailed in Secretary of State’s Memorandum of Law in Support of His Motion to Dismiss, Secretary Warner requests that this matter be dismissed, as well as any other relief which this Court may deem appropriate.

Respectfully submitted,

**MAC WARNER, in his official capacity as
SECRETARY OF STATE OF THE STATE OF
WEST VIRGINIA**

/s/ Curtis R. A. Capehart

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